



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Contract Services Co., Inc.

File: B-226780.3

Date: September 17, 1987

DIGEST

1. A bid bond which was executed approximately 5 months prior to bid opening does not render the bid nonresponsive since there is no indication from the face of the bond that the bond is not enforceable.
2. Protest against current financial acceptability of surety concerns matter of responsibility which can be established before contract award. The General Accounting Office generally does not review a challenge to firms's responsibility.

DECISION

Contract Services Co., Inc. protests the contracting officer's determination that a bid submitted by Del-Jen, Inc., under invitation for bids (IFB) No. N62467-87-TP-2300, the second step of a two-step procurement, was responsive to the IFB's requirement for submission of a bid bond. CSI argues that the bid was nonresponsive because the bid bond submitted by Del-Jen contained an issuance date of February 23, 1987, nearly 5 months prior to opening of Del-Jen's bid on July 14. We deny the protest in part and dismiss it in part.

In December 1986, the Navy issued solicitation No. N62467-87-P-2300 to obtain operation, maintenance, repair and minor construction services at the Naval Air Station, Cecil Field, Florida, located in Duval County and serving as an all-weather air station and homeport for all light attack and fixed wing antisubmarine aircraft on the east coast. The solicitation required firms to utilize and repair valuable equipment and facilities belonging to the government including bulldozers, road graders and other vehicles and material handling equipment in addition to performing minor construction. The solicitation was issued as a two-step-sealed-bid procurement in accordance with Federal Acquisition Regulation (FAR), subpart 14.5 (1987).

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In step one, offerors were to submit technical proposals; the solicitation cautioned offerors not to submit prices or cost estimates with their step-one proposal. In step two, each firm that had submitted an acceptable technical proposal was invited to submit a sealed bid for a contract.

The solicitation as originally issued required submission of technical proposals by February 23, 1987. The date for submission of technical proposals was extended to March 10 by amendment No. 0002, dated February 18, 1987, and finally to March 16 by amendment No. 0004 dated March 2. On April 7, 1987, offerors who had submitted acceptable technical proposals were requested to submit bids by May 7, 1987, later extended to July 14, 1987, by amendment No. 0009.

The solicitation contained FAR § 52.228-1, requiring that with the second step bid, each bidder submit a bid guarantee in the form of a firm commitment such as a bid bond or certified check. Such a bid guarantee could be applied to offset any damages that the government might suffer such as excess reprourement costs in the event that the successful bidder failed to execute all contractual documents including the payment and performance bond in a timely manner, necessitating contract termination for default. Tom Mistick & Sons Inc., B-222326, Apr. 3, 1986, 86-1 CPD ¶ 323.

Del-Jen submitted with its bid on July 10, a standard form (SF) 24 bid bond, executed on February 23, 1987, by Randolph J. Carr on behalf of the Reliance Insurance Company. On July 21, 1987, CSI submitted its protest, claiming that the bid bond submitted by Del-Jen was materially out of date, was therefore not binding on the surety and as a consequence was not responsive to the solicitation requirement for a bid guarantee.

The test applied in determining the responsiveness of a bid is whether the bid as submitted is an offer to perform without exception the exact thing called for in the invitation, and upon acceptance will bind the contractor to perform in accordance with all the invitation's material terms and conditions. 49 Comp. Gen. 553, 556 (1970). A bid guarantee's purpose is to secure the liability of a surety to the government in the event that the bidder fails to fulfill its obligation to execute a written contract and to provide payment and performance bonds. The sufficiency of a bid guarantee depends on whether a surety is clearly bound by its terms. When the liability of the surety is not clear, the guarantee properly may be regarded as defective, and the bid rejected as nonresponsive. Imperial Maintenance, Inc., B-224257, Jan. 8, 1987, 87-1 CPD ¶ 34. When a required bid bond under a solicitation is found to be

proper on its face, the bid is responsive. Consolidated Services, Inc., B-206413.3, Feb. 28, 1983, 83-1 CPD ¶ 192. Where a corporate surety is designated, a bid bond is proper "on its face" when it has been duly executed by the corporate surety's agent, the corporation surety appears on the Treasury Department Circular 570 list of acceptable sureties, and the surety agrees to be obligated to the penal amount of the bond. See Siska Construction Co., Inc., B-218428, June 11, 1985, 85-1 CPD ¶ 669; The bid bond also must not contain obvious facial defects, such as submissions of a blank bid bond, or markup or material alteration of the bond without evidence of surety approval. Argus Services, Inc., B-226164, Apr. 21, 1987, 87-1 CPD ¶ 429.

The bid bond submitted by Del-Jen is proper and unaltered in all respects. It correctly identifies the services by solicitation number and description of work and includes the appropriate penal amount. With regard to the execution of the bond 5 months before bid opening, the solicitation clearly provided that no bid would have been submitted on February 23, in any event; only technical proposals would have been submitted. Considering the time required for government review of proposals and for allowing acceptable offerors to submit bids, we think the surety was on notice that the guarantee would apply to a bid submitted sometime in April at the earliest. The SF 24 signed by the surety provides in essence that the bond is effective for the initial bid acceptance period and also survives any extension of the bid acceptance period up to 60 days without notice to the surety. Here, Del-Jen provided for a bid acceptance period of 120 days and with the additional 60-day extension allowed, the obligation entered into by the surety on February 23 would last until late October at the least, since the bid was to be submitted in April at the earliest.

We have no basis to conclude that the surety did not intend to honor its obligation under the bond, despite the delay in opening bids. In this connection, this Office has never treated the "bid date" entry on the SF 24 as materially affecting the surety's obligation. We have held that the absence of a date entry is a waivable informality. J. W. Bateson Company, Inc., B-189848, Dec. 16, 1977, 77-2 CPD ¶ 472. Even the alteration of a date by hand to reflect a postponed bid opening date does not affect the bond's enforceability. G & P Parlamas, B-226335, Apr. 27, 1987, 87-1 CPD ¶ 593. Thus, the Navy properly concluded the bond execution date did not render the bid nonresponsive.

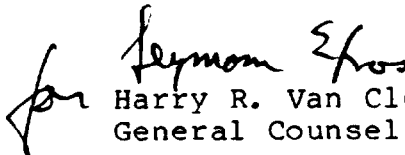
To the extent, CSI is challenging the financial acceptability of the surety because of the lapse of time from the initial issuance of the bond to bid opening, we dismiss this allegation. The question of the financial acceptability of

the surety is a matter of responsibility which may be established at any time before contract award. Transcontinental Enterprises, Inc., B-225802, 66 Comp. Gen. _____, July 1, 1987, 87-2 CPD ¶ 3.

No purchase or award may be made unless the contracting officer makes an affirmative determination of responsibility. FAR, 48 C.F.R. § 9.103(b) (1986). The contracting officer is vested with a wide degree of discretion and business judgment in making this determination; GAO will defer to this judgment unless the protester, who bears the burden of proving his case, shows that there was bad faith by the procuring agency or that a definitive responsibility criteria was not met. 4 C.F.R. § 21.3(f)(5); Swedlow, Inc., B-225534; B-225535, Mar. 30, 1987, 87-1 CPD ¶ 359. Neither exception has been raised here.

We note in this connection that the Navy advises us, and the protester does not dispute, that Reliance is on the Treasury Department list of sureties and has sufficient underwriting capacity to cover this bond.

We deny the protest in part and dismiss it in part.


Harry R. Van Cleve
General Counsel